Exhibit 87

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc v. Abbott Laboratories, Inc.; Dey, Inc., et al.; Boehringer Ingelheim Corp., et al.;
Civil Action No. 01-12257-PBS

Exhibit to the September 22, 2009, Declaration of George B. Henderson, II
In Support of Plaintiff's Response to Defendants' Combined Local Rule 56.1
Statement of Additional Material Facts Pertinent to the United States' Motions
for Partial Summary Judgment Against Defendants

S. HRG. 101-747

SKYROCKETING PRESCRIPTION DRUG PRICES

HEARINGS

BEFORE THE

SPECIAL COMMITTEE ON AGING
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

WASHINGTON, DC

ARE WE GETTING OUR MONEY'S WORTH?
JULY 18, 1989

TURNING A BAD DEAL INTO A GOOD DEAL
NOVEMBER 16, 1989

Serial No. 101-14

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Senator COHEN. Do your member companies themselves manufacture and sell generic drugs?

Mr. MOSSINGHOFF. Yes, they do.

Senator COHEN. And what sort of bottom line do they have as far as a component of your member companies' operation—how big a component is it of those companies?

Mr. MOSSINGHOFF. I don't know that answer, Senator. I don't know if PMA has that breakout or not. I think that a round number is that PMA companies probably supply about half of the generics sold in the United States, if that's helpful to you. I will attempt to get the other for the record, but I don't know the answer.

[Subsequent to the hearing, the following information was received for the record:]

Question. What percentage of the generic market is held by PMA companies?

Answer. To determine the share of the mulitiple-source market held by PMA companies, PMA compiled market-research data from IMS America on the top 26 multiple-source products. PMA restricted its analysis to those products and dosage forms for which FDA has judged generic competitors as bioequivalent. For two of the original 26 multiple-source products, there are no bioequivalent versions currently approved for marketing.

Based on the remaining 24 drugs, PMA estimates that PMA members, including the originator of the brand version, account for about 60 percent of both the prescriptions and the units (tablets or capsules) for these drugs. The originator brand alone represents about 50 percent of the prescriptions and units. For the generic market—i.e., the portion of the market that does not include the originator brand—PMA members account for about 25 percent of both the prescriptions and units.

Senator COHEN. That's all I have right now, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cohen.

Senator Warner.

Senator WARNER. Thank you for the offer to come in here and help today, because I do believe within your industry we can get these answers. The absence, perhaps, of some of your members today—I think you can speak for them having had an opportunity to visit with you, and maybe at a subsequent hearing they can come in and individually, after we frame the bigger picture, contribute their knowledge. I would hope that would be the case, because right now there is this appearance that there is some gouging and that perhaps the member companies are hiding. But I don't think that's the case. Are they?

Mr. MOSSINGHOFF. They're not gouging, Mr. Chairman.

Senator WARNER. Are they hiding?

Mr. MOSSINGHOFF. No, they're not hiding either. I really believe there was a genuine concern about discussion of proprietary information here.

Senator WARNER. This chart, you saw the flat, basic return to the druggists, whereas the prices have gone up. Is there a reason for that?

Mr. MOSSINGHOFF. Well, the price increase, as I indicated, has to do with a number of factors. The time during which the product life cycle exists, the United States has chosen as a policy to use generic substitution as a cost-control mechanism. That decision was made in 1984. Most of the European countries do not permit pharmacists to substitute generic products. They've chosen other ways. France has a very tight price regulation. The United Kingdom con-

trols profits in some way or another. So there is a mixed bag of how one would control prices, and I would say that it's the forces, the delays in the FDA, plus the enormous R&D expenditure, and no one can deny that.

Senator WARNER. Let me go to another one. In your prepared statement you mentioned that the so-called average wholesale price is, not really an accurate standard of what pharmacists actually pay for drugs. And this is what I was trying to get at. Why isn't it, and is there a better standard to use?

Mr. MOSSINGHOFF. Well, the average wholesale price is not determined by our companies. It's determined in part from surveys done of our companies. It's also done by other surveys, as I think testimony today would indicate. The Inspector General of HHS did a report, and I believe it was in 1986, that showed that in general "average wholesale price," the price published in the literature, is about 16 percent higher than the price that pharmacists actually pay for the products. In response to that while the Medicare bill was pending, PMA suggested that the Secretary of HHS do actual bi-annual surveys to determine what the real wholesale price is, rather than relying on these published prices which are, I think everyone agrees, higher than the actual price that pharmacists pay.

Senator WARNER. You heard my questions to the previous panel about the marketplace and why the forces of competition aren't bringing a stronger pressure to adjust these prices downward. Is there a uniqueness to this market, different than, say, other commodities that our society has?

Mr. MOSSINGHOFF. I think there is, Senator. It's a unique situation. I think, among other things, the percentage of R&D is totally unique in the United States and the amount of R&D——

Senator WARNER. To the credit of the industry that they're putting in.

Mr. MOSSINGHOFF. That's right. And it is a highly competitive market. As an example, I cite Tagamet, which was the forerunner, and in fact the Nobel Prize was given to the discoverer of Tagamet, an anti-ulcer drug. You couldn't tell the manufacturer that makes it that there's no competition, because Zantac, Pepcid, and Axid are all on the market and they're all anti-ulcer drugs. Now, it may be that for a given patient your doctor would say that the Tagamet is the right one, or Zantac is the right one, there are differences in these, but it is an enormously competitive market, in many ways a very diffuse market, very unique.

Senator WARNER. My time is up, I see.

The CHAIRMAN. Yes. Senator Kohl.

By the way, I passed by Senator Kohl a moment ago and I apologize. It was your turn, Senator Kohl.

Senator KOHL. No problem.

Mr. Mossinghoff, I'd just like to establish some of the profit and return on investment figures in your industry. According to my information, your industry is running a rate of profit at around 14.5 percent of sales, and about 29.5 percent return on investment? Is that somewhere close?

Mr. MOSSINGHOFF. I have the Fortune magazine report which is as good as anything PMA has. That says that in terms of return on